

ESTTA Tracking number: **ESTTA570426**

Filing date: **11/12/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Malgor & CO, Inc.		
Entity	Corporation	Citizenship	Puerto Rico
Address	PO Box 366 Cataño, PR 00963 UNITED STATES		

Attorney information	Karla F. Gonzalez-Acosta PO Box 1126 Land O Lakes, FL 34639 UNITED STATES kgonzalez@iplegalcounselor.com Phone:787-598-3449
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Applicant Information

Application No	85123625	Publication date	10/29/2013
Opposition Filing Date	11/12/2013	Opposition Period Ends	11/28/2013
Applicant	LUMINARA WORLDWIDE, LLC 2901 WEST COAST HWY, SUITE 350 NEWPORT BEACH, CA 92663 CANADA		

Goods/Services Affected by Opposition


Class 004. First Use: 2010/01/02 First Use In Commerce: 2010/01/12 All goods and services in the class are opposed, namely: Aromatherapy fragrance candles; Candle torches; Candles; Candles and wicks for candles for lighting; Candles for lighting; Christmas tree candles; Perfumed candles; Scented candles; Tea light candles
Class 011. First Use: 2010/01/02 First Use In Commerce: 2010/01/12 All goods and services in the class are opposed, namely: Battery operated electric candles; Electric candles; Electric light bulbs; Electric lighting fixtures; Electric lights for Christmas trees; Electric night lights; Electric torches for lighting; Flameless candles; LED (light emitting diode)lighting fixtures

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	76705841	Application Date	12/29/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	LUMINARIA		

Design Mark	
Description of Mark	The mark consists of the wording "LUMINARIA" in stylized letters with the drawing of three candles at the right side background.
Goods/Services	Class 004. First use: First Use: 2005/00/00 First Use In Commerce: 2005/00/00 CANDLES

Attachments	76705841#TMSN.jpeg(bytes) Luminaria Opposition.pdf(64810 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	s/Karla F. Gonzalez-Acosta/s
Name	Karla F. Gonzalez-Acosta
Date	11/12/2013

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MALGOR & CO., INC.,

Opposer

v.

LUMINARA WORLDWIDE, LLC

Applicant

Opposition No.: _____

Serial No.: 76/705841

Mark: LUMINARIA (composite mark)

Filing Date: December 29, 2010

Publication Date: N/A

Serial No.: 85/123625

Mark: LUMINARA (standard character)

Filing Date: September 06, 2010

Publication Date: October 29, 2013

Notice of Opposition

Malgor & Co., INC. (“**Opposer**”), a Puerto Rico corporation, whose mailing address is P.O. Box 366, Cataño, PR 00963, believes that it will be damaged by registration of the mark “LUMINARA” shown in Application Serial No. 85/123625 for “Aromatherapy fragrance candles; Candle torches; Candles; Candles and wicks for candles for lighting; Candles for lighting; Christmas tree candles; Perfumed candles; Scented candles; Tea light candles” in International Class 004, and “Battery operated electric candles; Electric candles; Electric light bulbs; Electric lighting fixtures; Electric lights for Christmas trees; Electric night lights; Electric torches for lighting; Flameless candles; LED (light emitting diode) lighting fixtures” in International Class 011, filed by LUMINARA WORLDWIDE, LLC (“**Applicant**”), and hereby respectfully submits the following for its opposition to the Application:

1. Commencing long prior to Applicant's filing date, Opposer have engaged, and is currently engaged in the manufacture, distribution, sale, advertising, and promotion in interstate commerce of candles.
2. Commencing long prior to Applicant's filing date, Opposer have used, and is now using Opposer's "LUMINARIA" composite mark in connection with the sale, distribution, advertising and promotion of candles distributed and sold by Opposer in interstate commerce.
3. Opposer started to use the mark "LUMINARIA" in January of 2005.
4. Opposer is the owner of two Puerto Rico trademark registrations:

<u>Date of Initial Registration</u>	<u>Trade Mark</u>
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November 12, 2004	Reg. No. 47704 Luminaria (for candles and derivatives) International class 004
November 12, 2004	Reg. No. 47705 Luminaria (for lamps and electronics) International class 011

5. In addition to Opposer's Puerto Rico Registered Marks, Opposer owns USPTO Application No. 76/705841 for candles in Class 004, for the composite mark "LUMINARIA".
6. Opposer, upon information and belief, avers, that its customers and the public in general are likely to be confused, mistaken or deceived as to the origin and sponsorship of Applicant's proposed goods to be marketed under Applicant's alleged "LUMINARA" candles and electronic devices.
7. Opposer, upon information and belief, avers that it will be damaged by the registration by Applicant of the alleged Applicant's "LUMINARA", as set forth in

Applicant's Trademark Application Serial No. 85/123625, since the mark creates a similar commercial impression to Opposer's "LUMINARIA" mark and will be used in connection with goods directly competitive with or closely related to the goods offered to the public by Opposer.

8. Opposer, upon information and belief, avers that a likelihood of confusion exists under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d) between Opposer's mark "LUMINARIA" and Applicant's mark "LUMINARA".
9. Moreover, such registration would run contrary to the requirement that all doubts as to the likelihood of confusion must be resolved in favor of Opposer, and against Applicant.
10. There is no issue as to priority. Opposer has been using its mark "LUMINARIA" since January of 2005, which was well before Applicant's Trademark Application Serial No. 85/123625 filing date and the date of first use recited therein.

WHEREFORE, Opposer prays that this Opposition be sustained, that the Application be refused, and that the mark applied for therein be refused registration.

RESPECTUFYLLY submitted, this 12th day of November of 2013.

s/Karla F. González-Acosta/s

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on the following Correspondent and Attorney of Record as listed on the TARR website of the United States Patent and Trademark Office by sending said copy on this 12th day of November of 2013, via email to: mtsang@fishiplaw.com rdean@fishiplaw.com Iripley@fishiplaw.com, and by Regular Mail to:

Mei Tsang
FISH & ASSOCIATES
2603 Main Street, Suite 1000
Irvine, CALIFORNIA 92614

s/Karla F. González-Acosta/s

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